IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 12.06.2009

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THE HONOURABLE MR. JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

W.A. NO. 1625 OF 2002

A.Pitchamuthu .. Appellant

- Vs -

Superintending Engineer
Dharmapuri Electricity Distribution Circle
Tamil Nadu Electricity Board
Dharmapuri 5. .. Respondent

Writ Appeal filed against the order dated 15th March, 2002, passed by learned single Judge in W.P. No.2226 of 1997.
For Appellant : Mr. S.Subbiah

For Respondent : Mr. B.Sekar
JUDGMENT
S.J.MUKHOPADHAYA, J.
The appellant (hereinafter referred to as the 'petitioner'), having unsuccessfully challenged the order dated 8th Aug., 1996, passed by the respondent, whereby it was ordered to recover certain amount from his terminal benefits, has preferred this writ appeal.
The main plea taken by the appellant is that the respondent cannot recover any amount from his terminal benefits in the absence of any rule.

2. The brief facts of the case is that the petitioner, while posted as Stores Custodian with the respondent Tamil Nadu Electricity Board (hereinafter referred to as the 'Board') during December, 1988, the stores were checked by a Special Team, Madras, which found 56 items were in shortage. The respondent issued a show cause notice on 22nd May, 1989, as to why cost of materials found short should not be recovered from him to which the petitioner replied on 5th June, 1989. Being not satisfied, another notice was issued on 26th July, 1989 by which the respondent directed to state as to why cost of materials, worked out at Rs.1,50,689.37 plus cartage and handling charges should not be recovered from the petitioner. The petitioner, thereafter, sent a reply on 3rd Aug., 1989.
It appears that the respondent, thereafter, initiated departmental proceeding for dereliction of duty for similar charge and suspended the petitioner. In the said departmental proceeding, charge having found proved, order of demotion to the lower post for a period of three years was passed on 6th June, 1991. At that stage, the petitioner filed a suit, O.S. No.390/91 and obtained an order of temporary injunction, which was made absolute on 27th Aug., 1991. Due to injunction order and pendency of the suit, he continued in the service against the higher post and retired on 30th June, 1995, on attaining the age of superannuation. The suit was dismissed on 29th July, 1995, on merit, holding that the petitioner would not be entitled to the relief sought for by him.

3. After the retirement of the petitioner, the respondent issued a memo dated 6th Sept., 1995, for recovery of a sum of Rs.1,74,046/= from his terminal benefits. Against the said order, he preferred W.P. No.14266/95 before this Court for setting aside the order and for direction on respondent to issue fresh notice and pass appropriate order affording him opportunity. In this background, the respondent issued a charge memo on 27th Jan., 1996 to show cause as to why the value of materials and shortage ought not be recovered from him to which the petitioner replied on 27th Feb., 1996. Thereafter, the respondent issued the impugned order dated 8th Aug., 1996, for recovery of a sum of Rs.91,579/= from out of his terminal benefits.

4. The petitioner, as stated above, has taken plea that in absence of a statutory rule the respondent has no jurisdiction to recover any amount from his terminal benefits.
On the other hand, the stand taken by the respondent is that the charge having found proved in the departmental proceeding, the order of suspension having revoked without prejudice to the outcome of the police investigation and departmental action, the recovery of the amount from the terminal benefits of the petitioner is proper and justified.

5. We have heard the counsel for the parties and noticed their relevant contentions.

6. It is not in dispute that the petitioner was Stores Custodian. During his tenure the stores were checked by Special Team, Madras, which found 56 items in shortage. For the said reason show cause notice was issued as on 22nd May, 1989 and, subsequently, he was informed that the shortage worked out at Rs.1,50,689.37 plus cartage and handling charges. It was informed that why such amount be not recovered.
So far as departmental enquiry is concerned, it was initiated for the allegation of dereliction of duty. In the said departmental proceeding the charge was proved and the suit filed against the same was finally dismissed on 22nd July, 1995 holding that the petitioner would not be entitled to the relief sought for by him. Therefore, the departmental proceeding in which the petitioner was found guilty for which he was reverted to the lower post, reached finality. Merely because of interim injunction the petitioner continued to function against higher post till he retired from service cannot take away the right of the Board to treat the petitioner reverted to the lower post nor it can take away the right of the respondent to adjust the loss caused to the Board due to the negligence of the petitioner.

7. Any order of punishment passed in the departmental proceeding is penal in nature, but all penal orders are not punishment. For example, the order of punishment of demotion to the lower post is penal, but order of recovery of loss caused due to negligence of the petitioner, though is penal in nature, is not a punishment. Therefore, no separate departmental proceeding was required to be initiated for the same, the petitioner having found guilty in the departmental proceeding.

8. So far as terminal benefits is concerned, it is true that in absence of any statutory rule or guideline no recovery can be made, but if any amount is due to the employer from the employee, it is always open to the employer to adjust such amount from the dues of the employee. In such background, if the respondent intended to adjust the loss from the terminal benefits of the petitioner, it cannot be held to be illegal.

9. In view of the aforesaid finding, we are not inclined to interfere with the order passed by learned single Judge and in absence of any merit the writ appeal is dismissed. There shall be no order as to costs.

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Superintending Engineer
Dharmapuri Electricity Distribution Circle
Tamil Nadu Electricity Board
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